

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6132 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHIVAJI G DEVRE

Versus

STATE OF GUJARAT

Appearance:

MR DP GUPTA for Petitioners
MR HL JANI for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/03/97

ORAL JUDGMENT

The petitioners, three in number, filed this Special Civil Application and prayer has been made for quashing and setting aside the order dated 29th November 1984 under which their services were ordered to be terminated.

2. The facts of the case, in brief, are that the names of the petitioners were forwarded by Employment

Exchange to respondent No.2, District Superintendent of Police, Valsad, and pursuant thereto, the petitioners were selected by regular selection committee on the post of Unarmed Police Constable on 30th March 1982. They were directed to resume their duties on 18th November 1983. On 1st July 1984, the petitioners were sent to Vadodara Police Training School by respondent No.2. On 7th July 1984, the petitioners were not allowed the training on the ground that their height is not up to the mark and is lacking by one centimeter. The petitioners were directed to join their duties at the station of service being Valsad under the District Superintendent of Police, Valsad. Under the order of respondent No.2 dated 29th November 1984 the services of the petitioners were terminated. Hence this Special Civil Application.

3. The learned counsel for the petitioners contended that the termination of services of the petitioners is by way of penalty and as such, it could have been done only after giving them an opportunity of hearing and holding inquiry. In support of this contention, reliance has been placed by the counsel for the petitioners on decisions of Apex Court and of this Court, the details of which are as under:

AIR 1979 SC 1234: Mazharul Islam Hashmi
v. State of U.P. & Ors.

1991(2) GLH (UJ) 19: Pravinbhai Gunubha
Chudasma v. State of
Gujarat & Anr.

AIR 1980 SC 1459: Nepal Singh v. State of
U.P. & Ors.

22 GLR 680

It has next been contended that the persons junior to the petitioners have been retained in services whereas the senior persons have been sent back.

4. On the other hand, the learned counsel for respondents contended that the termination of services of the petitioners is simpliciter termination without any stigma and as such, no inquiry is required to be held. It has next been contended that the petitioners were appointed on temporary basis and they were working on temporary basis and as such, before terminating their services, no notice or opportunity of hearing was required to be given. Lastly, it has been contended that the petitioners were not possessing requisite height as

prescribed under the Rules and as such, they were not eligible for the post of Unarmed Police Constable. It is by mistake that they have been given appointment and under the impugned order that mistake has been corrected.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. The first contention of the learned counsel for the petitioners is devoid of any substance. The petitioners were appointed on temporary basis, though after selection and the termination of their services has not been made by way of penalty. It is true that in the order of termination it has not been mentioned that they were not eligible for appointment, but no stigma has been there in the order of termination of their services. So, none of the rulings cited by the learned counsel for the petitioners are of any assistance as the order of termination of services of the petitioners is neither stigmatic nor has been made by way of penalty.

7. The second contention of the counsel for the petitioner is also equally of no merits. The petitioners services were terminated on the ground of lacking eligibility. In the reply to the Special Civil Application, the respondents have stated that as per the recruitment rules for Constable, Armed and Unarmed, and women branch, the height must not be less than 162 cms. and the chest measurement should not be less than 79 cms. and the difference between inflated and deflated chest measurement should not be less than 5 cms. The height of the petitioners No.1 and 2 was 161 cms. and that of petitioner No.3 was 160.5 cms. On 18th November 1983 when the petitioners were interviewed, their physical fitness measurements were taken but due to heavy rush, measurements of the petitioners about the height was not properly recorded and therefore by mistake, they were given appointment. But subsequently when they were sent for training at Police Training School, Vadodara, it has come to the notice of the Principal of the School that they are lacking physical fitness requirement as provided under the Rules. Their measurement of heights were again taken.

8. Rejoinder to the reply has not been filed by petitioners, and as such, the averments made in the reply stand uncontroverted. It is not the case of the petitioners that their height is 162 cms. So the services of the petitioners were terminated as they were not fulfilling the physical fitness as provided under the Rules. They were appointed on temporary basis and when

this mistake has been notices, their services has to be terminated, which has rightly been terminated, to which no explanation can be taken. The contention of the learned counsel for the petitioners of giving opportunity of hearing to the petitioners before passing the order of termination otherwise also is devoid of any substance. The Apex Court, in the case of M.P.V.H.S.N. vs. Devendrakumar, reported in JT 1995(1) SC 198, held that temporary Government servant does not become permanent unless he/she acquires that capacity by force of any Rule or is declared as permanent servant. It has further been held by the Apex Court that no hearing to a temporary employee needs to be given while terminating his services. The petitioners were fully known of the reasons on which their services were terminated, which is apparent from the averments made by them in para-9 of the Special Civil Application. The order of termination of services of the petitioner does not suffer from any infirmity or illegality whatsoever which calls for interference of this Court. The appointment of the petitioners on the post of Unarmed Police Constables was contrary to the Rules as they were lacking the physical fitness eligibility. Issue of writ of Mandamus or Certiorari cannot be claimed as a matter of course and right. It is a discretionary remedy and this Court may decline to issue writ of Mandamus or Certiorari in a case where issuance of writ may result in restoration of illegal order. The appointment, as stated earlier, of the petitioners on the post of Unarmed Police Constables, was illegal as it was contrary to the recruitment rules and therefore the writ of the nature as prayed for, for setting aside and quashing the orders impugned has to be declined, otherwise this Court will perpetuate illegality. If any reference is needed, then reference may have to the decision of the Hon'ble Supreme Court in the case of Gadde Venkateswara Rao v. Government of Andhra Pradesh & Ors., reported in AIR 1966 SC 828, decision of Rajasthan High Court in the case of Jagan Singh v. State Transport Appellate Tribunal, reported in AIR 1980 RAJ.1, decision of Kerala High Court in the case of A.M. Mani v. Kerala State Electricity Board, reported in AIR 1968 KERALA 76, and decisions of Patna High Court in the cases of Devendra Prasad Gupta v. The State of Bihar & Ors., reported in AIR 1977 PATNA 166 and Chintamani Sharan Nath Sahadeo v. State of Bihar & Ors., reported in AIR 1990 PATNA 165.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, granted by this Court stands vacated. No order as to costs.

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